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**LABOUR & E. S. I. DEPARTMENT**

**NOTIFICATION**

The 19th March 2012

No. 2144—li/1(B)-54/2002(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 21st November 2011 in Industrial Dispute Case No. 83 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Utkal Co-op. Banking Society Ltd., Cuttack Branch and its Workman Shri Rabinarayan Mishra represented through the General Secretary, Cuttack Commercial Workers Union, Cuttack was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 83 OF 2002

Dated the 21st November 2011

*Present :*

S. A. K. Z. Ahamed,  
Presiding Officer,  
Labour Court, Bhubaneswar.

*Between :*

The Management of . . . First-party—Managements  
M/s Utkal Co-op. Banking Society Ltd.,  
Cuttack Branch.

And

Its Workman . . . Second-party—Workman  
Shri Rabinarayan Mishra,  
represented through the  
General Secretary, Cuttack  
Commercial Workers Union,  
Cuttack.

*Appearances :*

Shri H. Dash, Chief Executive	. . . For the First-party—Management
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Shri T. Lenka, Vice-President, Shri S. N. Biswal, General Secretary	. . . For the Second-party—Workman

## AWARD

The Government of Odisha in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court vide Order No. 8233—li/1(B)-54/2002-LE., dated the 4th July 2002 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the termination of services of Shri Rabinarayan Mishra, Armed Guard with effect from the 4th January 1994 to the 21st January 1997 (F.N.) by the management of Utkal Co-op. Banking Society Ltd., Bhubaneswar is legal and/or justified ? If not, what relief Shri Mishra is entitled to?"

3. The case of the workman, in brief, as set out in his statement of claim is that he initially joined as Watchman under the management with effect from the 21st December 1983. Thereafter he was made an Armed Guard in the year 1990. On 8-12-1993 the workman was transferred to the Cuttack Branch Office of the management. Due to his illness, the workman sent his leave application for 4-1-1994 and 5-1-1994. After recovery from illness, when he went to resume his duty, the management did not allow him to do any duty. So the workman on 7-1-1994 requested and represented the management to join in his duty, but no action had been taken by the management for which he raised an industrial dispute. The management without considering the representation of the workman 7-1-1994, issued charge-sheet against him on 10-1-1994. The workman submitted a representation on 18-1-1994 wherein he has explained the occurrence on 4-1-1994 and requested the management to permit him to join in his duty. On 11-2-1994 the workman submitted his explanation denying the charges levelled against him. Thereafter on 14-2-1994 the management appointed Shri Shyamsundar Bhatta as the Enquiry Officer and Shri Suryakanta Mishra as the Marshalling Officer to enquire into the charges levelled against the workman. The workman has also received the additional charge-sheet, 19-2-1994 and submitted a representation on 21-2-1994 requesting the management to allow him to join in his duty, but no action was taken by the management. The workman has also submitted his explanation on 26-3-1994 to the additional charge-sheet denying the charges levelled against him. According to the workman though the enquiry was posted to 13-8-1994 and he requested the Enquiry Officer to supply the names of witnesses and documents, but no action was taken by the Enquiry Officer and no enquiry was conducted. Thereafter the management frequently changed the Enquiry Officers such as on 29-1-1998 appointed Shri Bansidhar Parida on 21-4-1999 appointed Shri K. K. Barik and Shri P. C. Mohanty, on 12-5-1999 appointed Shri Benudhar Nayak and Shri G. B. Tripathy and on 16-7-1999 appointed Shri Gagan Bihari Tripathy and Shri Prasant Chandra Mohanty. But in this appointment orders of the Enquiry Officer there was no mention of appointment of the Marshalling Officers. However on

21-1-1997 the management reinstated the workman in service. The workman has further stated that no enquiry report was supplied to him and also no second show-cause notice was given to him before imposing the punishment. Further according to the workman, the management has not given any prior notice or notice pay in lieu thereof and compensation under the provisions of the Industrial Disputes Act, 1947. On these averments, the workman has prayed for his termination from 4-1-1994 to 21-1-1997 was illegal and prayed with full back wages and other consequential service benefits.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management, as the workman remained absent, a charge-sheet was issued to him vide order, Dt. 11-1-1994 on several grounds including the charge of unauthorised absence on many occasions. But the workman did not come back to join in his duty. Again a set of additional charges were drawn up against the workman vide order, Dt. 19-2-1994. Pending finalisation of the proceedings, the workman was allowed to join in his duty on 21-1-1997 on his undertaking, Dt. 21-1-1997. Accordingly a disciplinary proceeding was conducted by following due procedure in which the workman was found guilty of the charges. So according to the management, the enquiry conducted by the Enquiry Officer was fair and proper and the Disciplinary Authority has taken the action against the workman as per law. So the management has prayed that the workman is not entitled to get any relief in this case.

5. In view of the above pleadings of the parties, following issues are settled :—

#### ISSUES

- (i) "Whether the termination of services of Shri Rabinarayan Mishra, Armed Guard, with effect from the 4th January 1994 to the 21st January 1997 (F.N.) by the management of Utkal Co-op. Banking Society Ltd., Bhubaneswar is legal and/or justified ?
- (ii) If not, what relief Shri Mishra is entitled to ?"

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved the documents under the cover of Exts. 1 to 13. Similarly the management has examined its Legal Assistant as M.W. 1 and proved documents under the cover Exts. A to K.

#### FINDINGS

7. *Issue Nos. (i) and (ii)*—For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

At the initial stage, the workman has challenged the reference on the ground that the domestic enquiry conducted against him as alleged by the management was not fair and proper. Though separate issue on the point of fairness of domestic enquiry has not been framed, both the parties have knowledge about such domestic enquiry during trial. So at this stage I feel it proper to decide the issue regarding fairness of the domestic enquiry first before proceeding to the other issues on merit.

8. According to the management, after knowing the unauthorised absence, the workman was charge-sheeted under the cover of Ext. A equal to Ext. 2 proved by the workman. Again the

management framed additional charge-sheet under the cover of Ext. B equal to Ext. 9. The workman submitted his show-cause on 26-3-1994 under the cover of Ext. C equal to Ext. 11. Further according to the management after due enquiry, the Enquiry Officer submitted his report under the cover of Ext. H equal to Ext. 13. Though the management has argued that the domestic enquiry conducted by the Enquiry Officer was fair and proper, but no Enquiry Officer was examined and no enquiry file was filed relating to the enquiry in this case. On the other hand, the workman has argued that though several Enquiry Officers have been appointed by the management, no Marshalling Officer was appointed and no opportunity was given to the workman to defend his case properly. So it is argued by the workman that the enquiry conducted by the management as alleged is not fair and proper. The workman was not given any intimation regarding the date of enquiry and he has not participated in the enquiry which was conducted beyond his back and no second show-cause notice was issued to him and without following the principles of natural justice, the workman was imposed punishment. Perused the documents marked as exhibits on behalf of both the parties.

9. Law is well settled that :

"An enquiry cannot be said to have been properly held unless—(i) employee proceeded against has been informed clearly on the charges levelled against him, (ii) witnesses are examined ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he has given a fair opportunity to examine witnesses including himself in his defence, if he so wishes on any relevant matter, and (v) the Enquiry Officer records his findings with reasons for the same in the report."

In the instant case, the Enquiry Officer has not been examined in this case and also the proceeding file has not been furnished by the management in this Court. Nothing has been shown that any witness has been examined nor the principles as mentioned in the authority as discussed above has been duly complied with. Furthermore, law is well settled that it is imperative on the part of the employer to furnish the enquiry report to the delinquent for giving opportunity to submit his explanation before awarding the punishment. Therefore, non-furnishing of copy of enquiry report to the workman before imposing the punishment violates the principles of natural justice and in such view of the matter, the dismissal of the workman is illegal and unjustified. In the instant case, nothing has been shown by the management that the copy of the enquiry report has been supplied and any second show-cause notice was served on the workman before imposing punishment. Further law is well settled that :

"It is on the punishing/disciplinary authority to impose proper punishment and Enquiry Officer has no role in awarding punishment. In the departmental proceedings, the Enquiry Officer himself has acted as investigator, prosecutor and judge, such a procedure is opposed to principles of natural justice."

M.W. 1 in his cross-examination has clearly admitted that the copy of the enquiry report was not supplied to the workman and second show-cause notice was also not issued to the workman. So in the circumstances, on careful consideration of all the materials available in the case record, as discussed above, now I came to the finding that the domestic enquiry conducted by the management against the workman was not fair and proper.

10. The allegation of unauthorised absence of the workman has not been duly proved on merit in the Court by the management. So when I have already come to the conclusion that the domestic enquiry conducted by the management against the workman was not fair and proper and the allegation against the workman has also not been duly proved by the management during trial, I am of the opinion that the termination of services of the workman with effect from the 4th January 1994 to the 21st January 1997 by the management is illegal and unjustified. As the workman has already been reinstated in service with effect from the 21st January 1997, he is entitled to get his wages and other benefits as if he was in service during the above period. Both the issues are answered accordingly.

11. Hence, it is Ordered :

That the termination of services of Shri Rabinarayan Mishra, Armed Guard with effect from the 4th January 1994 to the 21st January 1997 (F.N.) by the management of Utkal Co-op. Banking Society Ltd., Bhubaneswar is neither legal nor justified. The workman Shri Mishra is entitled to get his wages and other benefits as if he was in service during the above said period. The management is directed to implement this Award within a period of six months from the date of its publication, failing which, the amount shall carry interest at the rate of 10% per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED  
21-11-2011  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED  
21-11-2011  
Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor  
T. K. PANDA  
Under-Secretary to Government